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ENVIRONMENT & NATURAL
RESOURCES DIVISION
APPELLATE SECTION

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10 NORTHERN CALIFORNIA RIVER WATCH

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 NORTHERN CALIFORNIA RIVER CASE NO.: C06-06831 PJH
14 WATCH, a non-profit corporation,

15 PROOF OF SERVICE

16 Plaintiff,

17 v.

18 SHAMROCK MATERIALS, INC.,
19 SHAMROCK MATERIALS OF NOVATO,
20 INC.; and DOES 1-10, Inclusive,

21 Defendants.

DEPT. OF JUSTICE - ENRD
ENVIRONMENT DIVISION
06 NOV 16 P5:58

1 PROOF OF SERVICE

2 I am employed in the County of Sonoma, State of California. I am over the age of eighteen years
3 and not a party to the within action. My business address is 100 E Street, Suite 202, Santa Rosa, CA
4 95404.

5 On November 7, 2006, I served the following described document(s):

6 **Complaint for Injunctive Relief, Civil Penalties, Restitution and Remediation**
7 **U.S.D.C. Case No. C06831 PJH**

8 on the following parties by placing a true copy in a sealed envelope, addressed as follows:

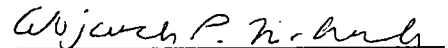
9 Alberto Gonzales, U.S. Attorney General
10 U.S. Department of Justice
11 950 Pennsylvania Avenue, N.W.
12 Washington, D.C. 20530-0001

13 Stephen L. Johnson, Administrator
14 U.S. Environmental Protection Agency
15 Ariel Rios Building
16 1200 Pennsylvania Avenue, N.W.
17 Mail Code 3213A
18 Washington, D.C. 20460

19 [X] (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first-class mail,
20 for collection and mailing at Santa Rosa, California, following ordinary business practices. I am readily
21 familiar with the practices of Law Office of Jack Silver for processing of correspondence; said practice
22 being that in the ordinary course of business, correspondence is deposited with the United States Postal
23 Service the same day as it is placed for processing.

24 [] (BY FACSIMILE) I caused the above referenced document(s) to be transmitted by Facsimile machine
25 (FAX) (707) 528-8675 to the number indicated after the address(es) noted above.

26 I declare under penalty of perjury, under the laws of the State of California, that the foregoing
27 is true and correct, and that this declaration was executed on November 7, 2006 at Santa Rosa,
28 California.


WOJCIECH P. MAKOWSKI

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FILED

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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E-Filing

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

PJH

13 NORTHERN CALIFORNIA RIVER CASE NO. **C-06-6831**
14 WATCH, a non-profit corporation,

15 Plaintiff,

16 v.

17 SHAMROCK MATERIALS, INC.,
18 SHAMROCK MATERIALS OF NOVATO,
19 INC.; and DOES 1-10, Inclusive,

20 Defendants.

COMPLAINT FOR INJUNCTIVE RELIEF,
CIVIL PENALTIES, RESTITUTION AND
REMEDATION (Environmental - Clean Water
Act -33 U.S.C. § 1251 et seq.)

21 NOW COMES Plaintiff, NORTHERN CALIFORNIA RIVER WATCH (hereafter,
22 "PLAINTIFF") by and through its attorney, and for its Complaint against Defendants, SHAMROCK
23 MATERIALS INC., SHAMROCK MATERIALS OF NOVATO, INC., and DOES 1-10, Inclusive,
24 (hereafter, "DEFENDANTS") states as follows:

25 **I. NATURE OF THE CASE**

26 1. This is a citizens' suit for relief brought by PLAINTIFF under the Federal Water Pollution
27 Control Act, also known as the Clean Water Act (hereafter, "CWA"), 33 U.S.C. § 1251 et seq.,
28 specifically 33 U.S.C. § 1365, CWA § 505, and 33 U.S.C. § 1311, CWA § 301, to stop DEFENDANTS
from repeated and ongoing violations of the CWA. These violations are detailed in the April 28, 2005
Notice of Violations and Intent to File Suit (hereafter, "NOTICE") made part of the pleadings of this
case as Exhibit A to this Complaint.

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2. DEFENDANTS are routinely violating the CWA by discharging pollutants into the waters of the United States in violation of the procedural requirements of National Pollutant Discharge Elimination System (hereafter, "NPDES") General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 97-03-DWQ and Water Quality Order No. 91-13-DWQ (as amended by Water Quality Order 92-12-DWQ) issued pursuant to CWA § 402(p), 33 U.S.C. § 1342(p) (hereafter, "General Permit") and CWA §§ 402(a) and 402(b), 33 U.S.C. § 1342(a) and § 1342(b), by discharging pollutants from a point source to a water of the United States during non-storm events without a NPDES permit.

3. PLAINTIFF seeks declaratory relief, injunctive relief to prohibit future violations, the imposition of civil penalties, and other relief for DEFENDANTS' violations of the terms of the NPDES Permit and their violations of the CWA.

4. Under 33 U.S.C. § 1251(e) Congress declared its goals and policy with regard to public participation in the enforcement of the CWA. 33 U.S.C. § 1251(e) provides, in pertinent part:

Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States.

II. PARTIES

5. PLAINTIFF, NORTHERN CALIFORNIA RIVER WATCH, is a 501(c)(3) non-profit public benefit corporation duly organized under the laws of the State of California, with headquarters located at 6741 Sebastopol Avenue, Suite, 140, Sebastopol, CA 95472. PLAINTIFF is dedicated to protecting, enhancing, and helping to restore the surface and subsurface waters of Northern California.

6. Many of PLAINTIFF's members live, work and/or recreate in or around the watershed areas affected by DEFENDANTS' discharges of pollutants as alleged in this Complaint and the NOTICE. PLAINTIFF's members have interests which are or may be adversely affected by DEFENDANTS' violations as described in this Complaint. Said members use the above described waters, their tributaries, and effected watershed areas for domestic recreation, drinking water, sports, fishing, swimming, hiking, photography, nature walks and the like. Furthermore, the relief sought herein will redress the injury in fact, likelihood of future injury and interference with the interests of said members.

1 7. DEFENDANT, SHAMROCK MATERIALS, INC. is a California corporation with a registered
2 office and administrative offices located at 181 Lynch Creek Way, Suite 200, Petaluma, CA 94954.
3 DEFENDANT SHAMROCK MATERIALS, INC., is a business engaged in the extraction of rock from
4 hillsides for sale and in the manufacture of cement.

5 8. DEFENDANT, SHAMROCK MATERIALS OF NOVATO, INC. is a California corporation
6 with a registered office and administrative offices located at 181 Lynch Creek Way, Suite 200, Petaluma,
7 CA 94954. DEFENDANT SHAMROCK MATERIALS OF NOVATO, INC., is a business engaged
8 in the manufacture of cement.

9 9. DEFENDANTS DOES 1 - 10, Inclusive, respectively, are persons, partnerships, corporations
10 and entities, who are, or were, responsible for, or in some way contributed to, the violations which are
11 the subject of this Complaint or are, or were, responsible for the maintenance, supervision, management,
12 operations, or insurance coverage of DEFENDANTS' facilities as identified in the NOTICE and further
13 in this Complaint. The names, identities, capacities, and functions of DEFENDANTS DOES 1 - 10,
14 Inclusive are presently unknown to PLAINTIFF. PLAINTIFF shall seek leave of court to amend this
15 Complaint to insert the true names of said DOE Defendants when the same have been ascertained.

16 **III. JURISDICTIONAL ALLEGATIONS**

17 10. Subject matter jurisdiction is conferred upon this Court by CWA § 505(a)(1), 33 U.S.C. §
18 1365(a)(1), which states in part that, "any citizen may commence a civil action on his own behalf against
19 any person . . . who is alleged to be in violation of (A) an effluent standard or limitation . . . or (B) an
20 order issued by the Administrator or a State with respect to such a standard or limitation." For purposes
21 of the CWA the term "citizen" means a person or persons having an interest which is or may be
22 adversely affected.

23 11. Members and supporters of PLAINTIFF reside in the vicinity of, derive livelihoods from, own
24 property near, and/or recreate on, in or near and/or otherwise use, enjoy and benefit from the
25 waterbodies, tributaries, wetlands, hydrologically connected water bodies and associated natural
26 resources into which PLAINTIFF contends the DEFENDANTS discharge pollution, or by which
27 DEFENDANTS' operations adversely affect those members' interests, in violation of the CWA. The
28 health, economic, recreational, aesthetic and environmental interests of PLAINTIFF and its members

1 may be, have been, are being, and will continue to be adversely affected by DEFENDANTS' unlawful
2 violations of the CWA. PLAINTIFF contends there exists an injury in fact to its members, causation of
3 that injury by the conduct of DEFENDANTS complained of herein, and a likelihood that the requested
4 relief will redress that injury.

5 12. Pursuant to CWA § 505(b)(1)(A), 33 U.S.C. § 1365(b)(1)(A), PLAINTIFF gave notice of the
6 violations alleged in this Complaint more than sixty (60) days prior to commencement of this lawsuit,
7 to the DEFENDANTS, the United States Environmental Protection Agency (both Federal and local),
8 and the State of California.

9 13. After the end of the 60 day Notice period the parties entered into an Agreement to Stay the Filing
10 of Litigation which provided in part that, for "the purposes of all procedural requirements under the
11 Clean Water Act, River Watch will be deemed to have filed its action as of the date this Agreement to
12 Stay Filing of Litigation is executed by all parties." The Agreement was extended twice by Stipulation
13 of the parties, and expired on October 26, 2006. The Agreement to Stay the Filing of Litigation and
14 associated Stipulations are attached as Exhibit B and fully incorporated into this Complaint.

15 14. Pursuant to CWA § 505(c)(1), 33 U.S.C. § 1365(c)(1), venue lies in this District as
16 DEFENDANTS' operations and facilities which are the sources of the violations complained of in this
17 Complaint are located within this District.

18 **IV. GENERAL ALLEGATIONS**

19 15. PLAINTIFF incorporates by reference all the foregoing including Exhibits A and B.

20 16. All illegal discharges and activities complained of in this Complaint occur in the Russian River,
21 Big Sulphur Creek, the Petaluma River, Laguna de Santa Rosa, the Napa River, Novato Creek, San
22 Francisco Bay, and their tributaries, wetlands, and/or hydrologically connected water bodies all of which
23 are waters of the United States.

24 17. The Environmental Protection Agency ("EPA"), State Water Resources Control Board
25 ("SWRCB") and applicable Regional Water Quality Control Boards (hereafter, "RWQCB") have
26 determined that the above-described watershed areas and affected waterways are beneficially used for
27 drinking water, water contact recreation, non-contact water recreation, fresh water habitat, wildlife
28

1 habitat, preservation of rare and endangered species, fish migration, fish spawning, industrial service
2 supply, navigation, and sport fishing.

3 18. DEFENDANTS own and/or operate gravel mining, distribution, cement manufacturing, and
4 retail operations at facilities located in Sonoma, Marin, and Napa County, California, as identified in the
5 NOTICE (hereafter "FACILITIES"). Said operations are commercial businesses, mining and selling rock
6 products including gravel and cement, to developers, builders, and individuals. DEFENDANTS have
7 discharged and continue to discharge pollutants both directly and indirectly during storm and non-storm
8 periods, from the FACILITIES into the waters of the United States.

9 19. Beneficial uses of most portions of the specified waterways are being affected in a prohibitive
10 manner by the illegal discharges and activities of DEFENDANTS. Also pursuant to CWA § 304, 33
11 U.S.C. § 1311, the EPA and the State of California have identified DEFENDANTS' operations as point
12 sources, the discharges from which contribute to violations of applicable water quality standards. The
13 violations herein described and alleged are continuing.

14 **V. STATUTORY AND REGULATORY BACKGROUND**

15 20. CWA § 301(a) and § 301(b), 33 U.S.C. §§ 1311(a) and 1311(b), prohibit the discharge of
16 pollutants from a "point source" into the navigable waters of the United States, unless such discharge
17 is in compliance with applicable effluent limitations as set by the EPA and the applicable State agencies.
18 DEFENDANTS' FACILITIES are point sources under the CWA. The effluent limits would normally
19 be incorporated into a NPDES permit for that point source specifically. Pursuant to CWA § 301(a), 33
20 U.S.C. § 1311(a), the EPA and the State of California have formally concluded that the discharges of
21 pollutants by the DEFENDANTS as alleged in this Complaint and complained of in the NOTICE, are
22 prohibited by law. Additional sets of regulations are set forth in the Basin Plan, California Toxics Rule,
23 the Code of Federal Regulations and other regulations promulgated by the EPA and the State of
24 California. CWA § 301(a), 33 U.S.C. § 1311, prohibits discharges of pollutants or activities not
25 authorized by, or in violation of an effluent standard or limitation or an order issued by the EPA or the
26 State with respect to such a standard or limitation including a NPDES permit issued pursuant to CWA
27 § 402, 33 U.S.C. § 1342. CWA § 306, 33 U.S.C. § 1316, specifically identifies cement manufacturing
28 as a point source activity with specific effluent limitations.

1 NPDES permit for the FACILITIES in violation of CWA §402(a) and CWA § 402(b), 33 U.S.C.
2 §1342(a) and 1342(b) which require a NPDES permit for non-stormwater discharges from a point source
3 to waters of the United States.

4 28. PLAINTIFF alleges the violations of DEFENDANTS are ongoing and will continue after the
5 filing of this Complaint. PLAINTIFF alleges herein all violations which may have occurred or will occur
6 prior to trial, but for which data may not have been available or submitted or apparent from the face of
7 the reports or data submitted by DEFENDANTS to the RWQCB or to PLAINTIFF prior to the filing of
8 this Complaint. PLAINTIFF will file amended complaints if necessary to address DEFENDANTS' State
9 and Federal violations which may occur after the filing of this Complaint. Each of DEFENDANTS'
10 violations are separate violations of the CWA.

11 29. PLAINTIFF avers and believes that without the imposition of appropriate civil penalties and the
12 issuance of appropriate equitable relief, DEFENDANTS will continue to violate the CWA as well as
13 State and Federal standards with respect to the enumerated discharges and releases from the
14 FACILITIES. PLAINTIFF avers and believes that the relief requested in this Complaint will redress the
15 injury to PLAINTIFF and its members, prevent future injury, and protect the interests which are or may
16 be adversely affected by DEFENDANTS' violations of the CWA, as well as other State and Federal
17 standards.

18 **B. Violation of CWA § 402(p), 33 U.S.C. §1342(p)**

19 **Industrial Storm Water Regulation**

20 30. PLAINTIFF realleges and incorporates by reference the allegations of Paragraphs 1 through 29
21 and Exhibits A and B as though fully set forth herein.

22 31. PLAINTIFF is informed and believes, and based on such information and belief alleges with
23 regard to certain of the FACILITIES identified in the NOTICE, DEFENDANTS do not have any
24 NPDES permits including those for stormwater. For those FACILITIES covered by the General Permit,
25 DEFENDANTS do not comply with the General Permit. Violations of the General Permit are violations
26 of the CWA.

27 32. The violations of DEFENDANTS are ongoing and will continue after the filing of this
28 Complaint.

1 **VII. RELIEF REQUESTED**

2 WHEREFORE, PLAINTIFF prays that the Court grant the following relief:

3 38. Declare DEFENDANTS to have violated and to be in violation of the CWA;

4 39. Issue an injunction ordering DEFENDANTS to immediately operate the FACILITIES as
5 described in the NOTICE, in compliance with the CWA and applicable effluent and receiving water
6 limitations of State and Federal standards, including acquiring the appropriate permits including NPDES
7 permits for direct discharges to the affected waters of the United States.

8 40. Issue an injunction ordering DEFENDANTS to immediately operate their FACILITIES, as
9 described in the NOTICE, in compliance with the CWA and applicable effluent and receiving water
10 limitations of State and Federal standards;

11 41. Order DEFENDANTS to pay appropriate civil penalties per violation per day for their violations
12 of the CWA;

13 41. Order DEFENDANTS to pay PLAINTIFF's reasonable attorneys' fees and costs (including
14 expert witness fees), as provided by 33 U.S.C. § 1365(d) and applicable California law; and,

15 42. Grant such other and further relief as may be just and proper.

16
17 DATED: October 30, 2006


KIMBERLY BURR
Attorney for Plaintiff
NORTHERN CALIFORNIA RIVER WATCH